TABLE OF CONTENTS

Volume 1

I.	Bacl	kground1					
II.	Microsoft Possesses Monopoly Power Over Operating Systems						
	A.	Microsoft's monopoly power is established by direct evidence of its existence and exercise					
	В.	Microsoft's monopoly power is also demonstrated by a structural analysis 20					
	C.	Microsoft's ability to control the price of Windows evidences its monopoly power					
	D.	Dean Schmalensee's contrary analysis is unreliable					
III.		rnative Platform-Level Technologies, Especially Internet Browsers and Java, eaten Microsoft's Operating System Monopoly					
	A.	Middleware technologies have the potential to reduce the applications barrier to entry and facilitate operating system competition					
	В.	The widespread use of non-Microsoft Internet browsers threatened to erode the applications barrier to entry and Microsoft's monopoly power 127					
	C.	Cross-Platform Java also presented a middleware threat to Microsoft's operating system monopoly					
	D.	The threats to Microsoft's monopoly posed by Internet browsers and Java are mutually reinforcing, and they could be essential to the emergence of other platform-level threats to Microsoft's operating system monopoly 147					
IV.		rosoft Attempted To Enter Market-Division Agreements To Eliminate Platformel Software That Threatened Its Operating System Monopoly					

	A.	Microsoft tried to eliminate the browser threat by proposing a naked market- division agreement to Netscape
	В.	Microsoft's proposal of market-division agreements to eliminate other potentially threatening middleware confirms the anticompetitive character of its course of conduct against the browser
V.		cosoft Engaged In A Predatory Campaign To Crush The Browser Threat To Its rating System Monopoly
	A.	After Netscape refused Microsoft's offer to divide the browser market, Microsoft embarked on a predatory campaign to eliminate the browser the
	В.	Microsoft tied its Internet Explorer browser to Windows 95 and Windows 98 in order to impede browser rivals such as Netscape, and for no legitimate pur passe
	C.	Microsoft imposed a variety of other anticompetitive restraints on the OEM channel in order to impede rivals such as Netscape
	D.	Microsoft entered into anticompetitive and exclusionary agreements with OLSs and ISPs
	E.	Microsoft entered into anticompetitive, exclusionary agreements with Internet Content Providers
	F.	Microsoft entered into exclusionary agreements with other firms that restricted their ability to promote, support, and distribute non-Microsoft browsers 553
	G.	Microsoft set a predatory price for Internet Explorer 577
VI.		cosoft Used Predatory and Anticompetitive Conduct to Impede Other Platform eats as Well, Thereby Further Entrenching Its Operating System Monopoly 634
	A.	Microsoft responded to the threat that Java posed to the applications barrier to entry by engaging in predatory and anticompetitive conduct
	В.	Microsoft engaged in anticompetitive conduct to induce Intel to abandon or restrict platform-level software

VII.	Through its predatory and anticompetitive conduct, Microsoft has maintained its operating system monopoly, dangerously threatened monopolization of the browser market, and inflicted substantial and far-reaching consumer harm710					
	Α.	Microsoft's campaign to blunt the browser threat further entrenched				
		Microsoft's operating system monopoly				
	В.	Microsoft's anticompetitive conduct created a dangerous probability that Microsoft would monopolize the market for Internet browsers 817				
	C.	AOL's acquisition of Netscape will not undo the harm to competition caused by Microsoft's predatory and anticompetitive conduct 829				
	D.	Microsoft's entire course of conduct has caused, and will continue to cause, substantial and far-reaching harm to competition				
	Е.	Microsoft's conduct has caused, and will continue to cause, substantial and far-				
		reaching consumer harm				

TABLE OF CONTENTS

Volume 1

I.	Back	ackground1					
II.	Micı	Microsoft Possesses Monopoly Power Over Operating Systems 8					
	A.	Microsoft's monopoly power is established by direct evidence of its existence and exercise					
	В.						
		1.	Oper	rating sys	stems for Intel-compatible PCs comprise a relevant market 21		
		2.		-	ssesses a dominant, persistent, and increasing share of the market systems for Intel-compatible PCs		
		3.			dominant market share reflects monopoly power because its perating systems is protected by high barriers to entry 34		
			a.	Defin	ition of barriers to entry		
			b.		pplications barrier to entry protects Microsoft's dominant position erating systems		
				(1)	Microsoft possesses a dominant market share because software developers have powerful incentives to write applications first and foremost to Windows 36		
				(2)	The same factors that reinforce Microsoft's large market share inhibit other operating systems from challenging Windows46		
				(3)	The persistence of Microsoft's huge market share is itself evidence of high entry barriers		
				(4)	The testimony of Apple and IBM illustrates the strength of the		

		applications barrier to entry
	c.	Other entry barriers reinforce the applications barrier to entry 59
C.		rosoft's ability to control the price of Windows evidences its monopoly er
	1.	Microsoft does not consider rival operating systems in pricing Windows 95 or Windows 98
	2.	Microsoft raised the prices of obsolete versions of Windows 62
		a. Microsoft increased the Windows 95 price when it released Windows 98
		b. Microsoft used the threat of withholding discounts on Windows 95 to double the price charged IBM for Windows 3.1 following the release of Windows 95
	3.	Other aspects of Microsoft's pricing of Windows are consistent with monopoly power
D.	Dear	Schmalensee's contrary analysis is unreliable
	1.	Dean Schmalensee's approach to market definition is flawed
	2.	Dean Schmalensee's opinion that Microsoft lacks monopoly power because of low barriers to entry is flawed
		a. Dean Schmalensee is wrong that the applications barrier to entry is low
		b. Dean Schmalensee's contention that entry into the microcomputer software industry is easy is a red herring
		c. Dean Schmalensee is wrong in arguing that the existence of potential threats to Windows shows that barriers to entry are low
	3.	Dean Schmalensee's contention that "long term threats" prevent Microsoft from exercising monopoly power today is flawed 107

		4.	Dean Schmalensee is wrong that Microsoft's other behavior is inconsistent with monopoly power					
III.			Platform-Level Technologies, Especially Internet Browsers and Java, licrosoft's Operating System Monopoly					
	A.	Middleware technologies have the potential to reduce the applications barrie to entry and facilitate operating system competition						
	В.	The widespread use of non-Microsoft Internet browsers threatened to erode the applications barrier to entry and Microsoft's monopoly power 127						
		1.	The nature of the browser threat					
		2.	Microsoft recognized the threat that Internet browsers, in particular Netscape Navigator, posed to its operating system monopoly					
	C.	Cross-Platform Java also presented a middleware threat to Microsoft's operating system monopoly						
		1.	The nature of the Java threat					
		2.	Microsoft recognized the Java threat					
	D.	The threats to Microsoft's monopoly posed by Internet browsers and Java mutually reinforcing, and they could be essential to the emergence of other platform-level threats to Microsoft's operating system monopoly						
IV.	Microsoft Attempted To Enter Market-Division Agreements To Eliminate Platform- Level Software That Threatened Its Operating System Monopoly							
	A.	Microsoft tried to eliminate the browser threat by proposing a naked market-division agreement to Netscape						
		1.	Microsoft first unsuccessfully sought to purchase or license Netscape's browser software code					
		2.	When Microsoft recognized the threat that Netscape's browser posed to its monopoly, Microsoft set out to eliminate the threat by seeking Netscape's agreement not to compete and to divide the browser market 152					

	a.	eliminating Netscape as a browser supplier for Windows 95 152				
	b. c.	Microsoft first suggested that Netscape not compete with it in the Windows 95 browser business at a June 2, 1995, meeting 154 At a June 21, 1995, meeting Microsoft expressly proposed a naked market-division agreement to stop Netscape from offering a competing platform				
3.	explori	oft's after-the-fact assertion that its market division proposal was simply ing forms of legitimate cooperation is pretextual and contrary to the ce				
	a.	Microsoft's contention that it was not trying to get Netscape out of the browser business is erroneous and rests on a misleading play on words				
	b.	Rosen's other testimony, both regarding the June 21, 1995, meeting and more generally, is evasive and misleading 172				
	c.	Microsoft's contention that it engaged in legitimate joint venture discussions with Netscape is contrary to the evidence 176				
4.	both th	Acceptance of Microsoft's market-division proposal would have resulted in both the maintenance of Microsoft's operating system monopoly and a Microsoft monopoly in the browser market				
potent	ially th	roposal of market-division agreements to eliminate other reatening middleware confirms the anticompetitive character of its duct against the browser				
1.	Micros	oft similarly attempted to divide markets with Apple 192				
	a.	Apple's QuickTime multimedia software, like the browser, is platform-level software that Microsoft viewed as a potential-threat to its operating system monopoly				
	b.	Just as with Netscape, Microsoft sought to divide markets with Apple in order to eliminate the threat that QuickTime's platform-level components might pose.				

B.

			c. Microsoft's purpose in proposing a division of markets to Apple was to ensure Microsoft's continued control over platform-level interfades
			d. Microsoft retaliated against Apple, just as it did with Netscape, when Apple refused to accept Microsoft's proposal 202
			e. Just as with Netscape, Microsoft's proposal was unrelated to any efficiency-enhancing sharing of technology
		2.	Microsoft also attempted to divide markets with RealNetworks, using the same carrot and stick approach it used with other potential platform rivals
V.			Engaged In A Predatory Campaign To Crush The Browser Threat To Its System Monopoly
	A.		r Netscape refused Microsoft's offer to divide the browser market, cosoft embarked on a predatory campaign to eliminate the browser thপ্রথ
		1.	Microsoft made obtaining browser share a central corporate objective . 217
		2.	Microsoft embarked on a predatory and anticompetitive course of conduct designed to gain browser share
		3.	Microsoft's efforts to pressure Intel to stop developing or supporting platform-level software illustrate Microsoft's predatory intent and tactics
			a. In an August 1995 meeting, Microsoft pressured Intel into not resuming platform-level software and not supporting Netscape and Java
			b. In subsequent meetings in the Fall of 1995, Microsoft explained to Intel that its strategy would be to kill Netscape and control Internet standards
	В.		rosoft tied its Internet Explorer browser to Windows 95 and Windows 98 in r to impede browser rivals such as Netscape, and for no legitimate purpose
		1.	Internet Explorer and Windows operating systems are separate products

a.	Browsers and operating systems are universally recognized by industry participants to be separate products						
	(1)	An Inte	ernet br	owser supplies web browsing 230			
	(2)	Industry participants view a browser as an application, and not as part of an operating system					
	(3)	In its ordinary commercial conduct, Microsoft treats Into Explorer as a separate product					
		(a)	positio and tra	soft promotes Internet Explorer as a product, ins it in competition with other Internet browsers, icks its market share relative to those of other ters			
		(b)		soft treated Internet Explorer and Windows tely until the issue arose in litigation 238			
			(1)	Before litigation, Microsoft called Internet Explorer a browser in its ordinary commercial conduct			
			(2)	Since litigation began, however, Microsoft has made a concerted effort to change its language in order to aid its legal position 240			
b.	The recognition that browsers and operating systems are separate products reflects the marketplace reality that consumers, for a wide variety of reasons, demand operating systems and Internet browsers separately						
	(1)	Some consumers demand browsers and operating systems separately because different browsers have different features and they prefer to obtain a PC containing only the desired browser					
	(2)	browse	ers and o	ers, particularly corporate customers, demand operating systems separately because they prefer on the same browser across many PCs and			

		acros	s different operating systems
	(3)	separ	e consumers demand browsers and operating systems rately because they may wish to upgrade one without ading the other
	(4)		e customers demand browsers and operating systems rately because they want no web browsing capability2449all
	(5)	reaso	Is are surrogates for end users; and thus, for the above ons, they too demand browsers and operating systems rately
c.		•	is separate demand, firms — including Microsoft — have eitent to supply browsers and operating systems separately
	(1)	to be,	net Explorer and other browsers have been, and continue, supplied separately from ating systems
	(2)	Micro	ating system vendors — at least those which, unlike osoft, lack market power — supply operating systems rately from browsers
		(a)	Some operating system vendors offer consumers the choice of licensing the operating system without a browser
		(b)	Operating system vendors other than Microsoft sometimes bundle one or more browsers with their systems but allow VARs, OEMs, or end users to remove them or not to install them
		(c)	Until recently, Microsoft likewise accommodated this separate demand by enabling users to remove Internet Explorer from Windows
			net Explorer to Windows in order to impede browser rivals ting system monopoly
a.	Befor	e it dec	eided to blunt the browser threat, Microsoft did not plan to

2.

	tie its	browser to Windows						
b.		Microsoft changed its plans, and decided to tie its browser to Windows, in order to impede Netscape						
c.	OEM	Microsoft used its operating system monopoly to compel OEMs licensing Windows 95 also to license Internet Explorer 1 and 2						
d.	Micro	osoft next tied Internet Explorer 3 and 4 to Windows 95 . 287						
	(1)	Microsoft concluded that merely tying Internet Explorer to Windows was not sufficient to defeat Netscape and that, to win the browser war, it must make Windows and Internet Explorer difficult to separate						
	(2)	In furtherance of this objective, Microsoft tied Internet Explorer 3 to Windows by commingling the code that supplies web browsing with the code that supplies operating system functions, forcing OEMs to license that product, and refusing to supply an unbundled option						
		(a) Software routines and files need not be developed or distributed together to achieve seamless integration of their functions						
		(b) Although recognizing it could have chosen a different approach, Microsoft made Internet Explorer 3 and Windows difficult to separate and offered only a bundled version to OEMs and end users 294						
	(3)	Microsoft similarly tied Internet Explorer 4 to Windows						
	(4)	Microsoft also tied the browser to the operating system by refusing to license OEMs, and refusing to permit OEMs to offer their customers, Windows with Internet Explorer "uninstanded"						
		(a) Microsoft configured Internet Explorer to "uninstall" in response to demand for Windows without Internet						

				Explorer				
			(b)	"Uninstalling" Internet Explorer removes the Internet browser product				
			(c)	Microsoft used its operating system monopoly to deny OEMs the ability to license or sell Windows with Internet Explorer uninstalled 309				
	e.	Micro	Microsoft also tied Internet Explorer to Windows 98 310					
		(1)		soft concluded that defeating Netscape required it its browser more tightly to the operating system . 310				
		(2)	brows to sep the "u	complish this objective, Microsoft made the ser and the Windows 98 operating system more difficult arate by, among other things, eliminating minstall" capability and hindering users from ag other browsers the default				
3.				or economic justification for Microsoft's tying of Internet ws				
	a.			welding" of its browser thwarted the substantial demand without an Internet browser				
	b.			echnical reason for Microsoft's refusal to meet demand for hout web browsing				
		(1)		soft easily could have supplied Windows 95 without web				
		(2)	brows	soft easily could have supplied Windows 98 without web sing and enabled OEMs and users to "uninstall" the ser				
	c.	demai	nd for Wing by	echnical reason for Microsoft not to meet Windows 95 or Windows 98 without web offering further separation between the the operating system				

		(1)	Windo and stil	oft easily could supply versions of Windows 95 and ws 98 without the routines that provide web browsing Il offer users the same alleged benefits of its "integrated" s and design
			(a)	Bundling the browser with the operating system is inefficient for users that do not want the
				browser
			(b)	Tying the browser to the operating system is not necessary to achieve the benefits sought by users who want both the operating system and the
				Internet Explorer browser
		(2)	provide	oft's forced licensing of its browser is not necessary to e OEMs and users with other benefits, such as new file s and data protocols
	d.	have ac	dvanced	economic justifications Microsoft's witnesses I for tying Internet Explorer to Windows are evidence
		(1)		oft's conduct was not plausibly designed or ed to increase demand for Windows
		(2)		oft's tie-in and related restrictions were not reasonably ary to preserve the integrity of the Windows platf@ff0
		(3)	Micros	oft's quality-related justifications are pretextual . 359
4.		-	_	nternet Explorer to Windows has caused significant and consumer harm
	a.		_	cond product in a software category imposes costs on
		(1)	Increas	sed technical support costs
		(2)	Additio	onal testing costs
		(3)	Opport	cunity costs

		b.	costs	soft's tie-in and associated contractual restrictions raised the to OEMs of, and thus deterred OEMs from, preinstalling ape and other non-Microsoft browsers
		c.		osoft's conduct similarly raised the costs to end users of employing dicrosoft browsers
			(1)	It is undesirable for a consumer who wants one type of browser to have a different browser pre-loaded on his PC
			(2)	The hard-coding of Internet Explorer makes users less likely to use Netscape with Windows 98
		d.		soft's conduct has caused other significant inefficiencies and mer harm
			(1)	Microsoft's commingling of the browser and operating system reduces system performance
			(2)	Microsoft's commingling of the browser and operating system causes undesirable system complexity, incompatibilities and security concerns
		e.	not re	Schmalensee's testimony that Microsoft's conduct did sult in significant competitive and consumer harm is able
C.			-	a variety of other anticompetitive restraints on the OEM impede rivals such as Netscape
	1.			posed exclusionary restrictions on OEMs' ability to modify the ektop and start-up sequence
		a.	to, an	soft imposed the "Windows Experience" restrictions in response d in order to stop, OEMs' featuring Netscape Navigator more nently than Internet Explorer
		b.		osoft's restrictions significantly increased the costs to s and end users of preinstalling or using non-Microsoft

		browse	ers 388
		(1)	Microsoft intended its restrictions to facilitate winning the browser war
		(2)	Microsoft's restrictions significantly raised the costs of its browser rivals, thereby impairing their ability to compete and harming consumers
	c.	neither	oft's recent relaxation of some of its restrictions eliminates the most anticompetitive restrictions nor the restrictions' past
	d.		oft's justifications for its restrictions are pretextual and belied by dence
		(1)	Microsoft's purported concern with consistency of the user experience cannot explain its restrictions 406
		(2)	Microsoft's purported concern with protecting product quality and goodwill cannot explain its restrictions 408
		(3)	Microsoft's restrictions are unrelated to its purported concern of preventing fragmentation of the Windows platform . 413
		(4)	Microsoft's copyright over aspects of Windows cannot justify its restrictions
2.	hinder	product	d its monopoly power to force OEMs into taking actions to as or industry developments that threatened its operating system
	a.		soft used threats and bribes to induce OEMs to help the its operating system monopoly
		(1)	Microsoft used its monopoly power to secure Compaq's assistance in its exclusionary strategy 415
		(2)	Microsoft used MDA discounts to induce other OEMs to take exclusionary actions

		(a)	Explorer the default browser
		(b)	Microsoft offered discounts for preserving the Microsoft-dictated Windows interface 437
		(c)	Microsoft offered discounts to OEMs that designed PCs in accordance with the Microsoft Hardware Design Guide ("HDG") and subject to validation testing at Microsoft's Windows Hardware Quality Labs ("WHQL")
b.			ed its monopoly power to punish OEMs that refused to exclusion of rivals
	(1)		osoft threatened "MDA repercussions" if IBM continued ndle Netscape
	(2)		osoft threatened to harm Gateway if it supported or led Netscape
	(3)		osoft repeatedly penalized IBM for competing ast Microsoft
		(a)	Microsoft withheld a Windows 95 license from IBM until 15 minutes before the product's launch because of IBM's preloading of competing products
		(b)	Microsoft conditioned access to critical marketing support, and other terms and conditions for Windows provided to other OEMs, on IBM's not preloading competing products with the PCs it shipped 450
		(c)	Microsoft sought to condition substantial MDA price reductions on IBM's ceasing to support competing products
c.			anticompetitive intent is evidenced by the clear contrast in of IBM and Compag

		tered into anticompetitive and exclusionary agreements with OLSs460
1.	limiti	soft determined that securing distribution for Internet Explorer, and ag Netscape's distribution, through leading access providers was critical to g browser usage share
2.		herance of its goal of gaining browser usage share, Microsoft entered into ionary agreements with the most important ISPs and OLSs 463
	a.	Microsoft's exclusionary OLS agreements
	b.	Microsoft's exclusionary ISP agreements
	c.	Microsoft's Exclusionary "Internet Explorer preferred" agreements
	d.	Microsoft anticipated that its exclusionary agreements would wrest significant browser share from Netscape
3.		nportance of the exclusionary terms is evidenced by how much Microsoft SPs and OLSs to enter into the agreements
	a.	Microsoft paid significant value other than promotion through Windows to induce ISPs and OLSs to agree to its exclusionary terms 471
	b.	Microsoft also bribed ISPs and OLSs by offering what both access providers and Microsoft viewed as valuable promotion through Windows
		(1) Promotion in Windows is valuable to ISPs and OLSs because Windows is ubiquitous and users tend to select Internet access providers promoted through Windows 475
		(2) Microsoft created, and gave away, prominent desktop placement for ISPs and OLSs that agreed to its exclusionary terms
		(3) As Microsoft predicted, OLSs and ISPs agreed to its exclusionary restrictions to obtain valuable desktop place486nt

D.

		(4)	valuable and would not have agreed to Microsoft's exclusionary restrictions absent placement in the Windows OLS Folder
	c.		osoft unsuccessfully attempted at trial to minimize the value of oution and promotion through Windows 485
	d.		osoft's assertion that it lacks monopoly power over software oution is immaterial
	e.		osoft's contention that it simply offered ISPs and OLSs a better ct is erroneous and misplaced
4.	Micros	soft's a	greements have caused substantial competitive harm 493
	a.	Micro	osoft's agreements raised rivals' costs
	b.		osoft's contracts substantially excluded rival web
		(1)	Microsoft's internal analyses evidence the impact of its restrictions
		(2)	The exclusionary impact of Microsoft's agreements is confirmed by the AdKnowledge data 498
		(3)	The exclusionary impact of Microsoft's agreements is confirmed by Internet Explorer's comparative lack of success in other channels
	c.	signif	osoft's arguments that its ISP and OLS agreements did not have a icant exclusionary impact are belied by the nce
		(1)	Microsoft's restrictions were not ineffective 504
		(2)	Microsoft's agreements frustrated access providers' desire to offer customers a choice of browsers
		(3)	Microsoft witnesses' testimony that its ISP and OLS

				agreements did not have an exclusionary impact is unreliable
			(4)	Microsoft's failure to enforce certain restrictions, and its partial waiver of them on the eve of this litigation, do not eliminate the agreements' anticompetitive effects 514
			(5)	Microsoft's agreements were exclusionary and anticompetitive notwithstanding the small number of subscribers ISPs and OLSs garnered from the referral server
	5.	Micros	soft's ju	stifications for its agreements are pretextual 518
Е.				ato anticompetitive, exclusionary agreements with Internet
	1.	Micros	soft dete	ermined that ICPs could help it win the browser war 524
		a.	Interne	et Content Providers
		b.	Interne	soft determined that inducing leading ICPs to favor et Explorer and disfavor rivals would facilitate winning owser war
	2.			objective of gaining browser usage share, Microsoft entered into agreements with ICPs
		a.		soft developed the Channel Bar believing that it would generate ntial revenue
		b.		soft nonetheless decided not to charge ICPs for placement on the el Bar, but rather to use such placement as "strategic barter31"
			(1)	Microsoft's exclusionary agreements
			(2)	ICPs agreed to these restrictions in order to get placement on the Windows desktop
	3.	Micros	soft's IC	CP agreements were exclusionary
		a.	Micros	soft specifically intended and anticipated that its ICP agreements

			would deprive Netscape of revenue, exclude Netscape and other browser rivals, and protect Microsoft's operating system monop6B8
		b.	Microsoft's contention that its ICP agreements were not capable of causing significant anticompetitive effects is unfounded 543
	4.	Micro	osoft's ICP agreements lacked justification 547
F.			ntered into exclusionary agreements with other firms that restricted to promote, support, and distribute non-Microsoft browsers 553
	1.	enter	osoft used its leverage over office productivity suites to coerce Apple to into an exclusionary agreement that favored Internet Explorer and rely disadvantaged browser rivals
		a.	To facilitate winning the browser war, Microsoft sought to obtain default status for Internet Explorer on the Macintosh 553
		b.	To accomplish its objective, Microsoft used its leverage over Apple, specifically Apple's dependence on Microsoft's Office productivity suite, to coerce Apple to enter into an exclusionary agreement that favored Internet Explorer and disfavored rivals 554
			(1) Microsoft's Office productivity suite ("Mac Office") was and remains vital to Apple's business
			(2) Microsoft used the threat of stopping development of and support for Mac Office to extract Apple's agreement to favor Internet Explorer and to restrict its distribution of rivals 557
		c.	The restrictions Microsoft coerced Apple into accepting had significant exclusionary effects
		d.	Microsoft's coercion of Apple to agree to exclusionary restrictions lacks justification
	2.	Micr	osoft also induced RealNetworks not to support Netscape 572
	3.		osoft conditioned access to early beta releases of Windows and other nical assistance on ISVs' agreeing to make Internet Explorer the default

	brow	yser and to adopt Microsoft-controlled Internet standards 575
Mic	rosoft s	et a predatory price for Internet Explorer 577
1.		rosoft set a zero price for its browser for the purpose of depriving cape of revenue and protecting its operating system monopoly 577
2.		rosoft incurred hundreds of millions of dollars in costs in its effort to gain user usage share
3.		rosoft also sacrificed revenue from other products to gain browser usage
4.	antic	ne time it incurred its immense browser-related costs, Microsoft did not ripate recoupment except through weakening browser rivals and thereby ecting its operating system monopoly
5.	impe	effect of Microsoft's predatory pricing of Internet Explorer has been to ede rivals, harm consumers, and facilitate Microsoft's objective of blunting prowser threat
	a.	Microsoft's predatory pricing injured competition 604
	b.	Microsoft's predatory pricing facilitated monopoly recoupment and injured consumers
6.		after-the-fact justifications Microsoft offered for its better-than-free pricing ternet Explorer are pretextual and inconsistent with the evidence . 609
	a.	Microsoft's assertion that it reasonably expected its browser-related expenditures to be profitable because of expanded demand for Windows is pretextual
	b.	Microsoft's argument that ancillary revenues explain its better-than-free pricing of Internet Explorer is pretextual
	c.	Dean Schmalensee's argument that predation is implausible is fla625d
		(1) Dean Schmalensee greatly underestimates the costs, and overstates the legitimate benefits, of Microsoft's predatory

G.

					strategy
				(2)	Dean Schmalensee is wrong that successful predation required eliminating Netscape
				(3)	Dean Schmalensee is wrong that predation is implausible on the ground that AOL "holds the key" to the browser market 628
				(4)	Dean Schmalensee is wrong that predation is implausible because other threats to Microsoft's operating system monopoly might exist or arise 629
VI.				•	and Anticompetitive Conduct to Impede Other Platform Further Entrenching Its Operating System Monopoly 634
	A.			_	ed to the threat that Java posed to the applications barrier to in predatory and anticompetitive conduct
		1.			olluted" Java by developing and distributing a version that is not m
		2.		-	purpose in polluting Java was to reduce the threat that m Java posed for the application barrier to entry 645
		3.	Micro	osoft en	gaged in anticompetitive conduct to exclude cross-platform656va
			a.		osoft used predatory means to weaken the principal distribution ele for cross-platform Java, Netscape
			b.	and u	osoft used its monopoly power to force widespread distribution usage of its Windows-specific version va
				(1)	Microsoft entered into exclusionary "First Wave" agreements with ISVs
				(2)	Microsoft misled developers into using proprietary extensions to develop Windows-specific programs 663
			c.		osoft induced third parties not to support cross-platform

		(1)	Microsoft pressured Intel not to support cross-platform Java
		(2)	Microsoft pressured Apple and IBM not to support cross-platform Java
		(3)	Microsoft entered into agreements with ISVs that limited their ability to support cross-platform Java 676
	4.	Microsoft's	s efforts to impede cross-platform Java facilitated the maintenance of operating system monopoly, hindered innovation, and harmed
В.			d in anticompetitive conduct to induce Intel to abandon or level software
	1.		epeatedly objected to Intel's efforts to develop platform-level
	2.		engaged in predatory conduct designed to block Intel from its platform-level NSP software
			crosoft viewed Intel's platform-level NSP software as a potential at to its operating system monopoly 690
			crosoft blocked platform-level NSP through predatory duct
	3.		or supporting platform-level software
	4.	monopoly,	of Microsoft's conduct was further to entrench its operating system hamper innovation, and deprive consumers of the benefits of Intel's vel software
	5.	NSP is pret	s contention that technical considerations explain its objections to extual, and the testimony of its witnesses regarding NSP is not

-	· .		monopoly, dangerously threatened monopolization of the browser
mar	ket, and	i inflict	ted substantial and far-reaching consumer harm
A.			campaign to blunt the browser threat further entrenched
	Mici	rosoft's	operating system monopoly
	1	the b	rosoft could maintain its operating system monopoly without monopolizing prowser market because, by gaining merely a substantial share of browsers denying a large share to rivals), it was able significantly to reduce the ihood that its monopoly power would be eroded
	2.		rosoft's conduct significantly hindered rivals' ability to obtain and retain were usage
		a.	The OEM and ISP/OLS channels are the most efficient channels for obtaining usage
		b.	Microsoft's anticompetitive and predatory conduct substantially raised the cost to browser rivals of obtaining usage through the OEM and ISP/OLS channels
		c.	The channels to which Microsoft relegated Netscape are markedly inferior and cannot compensate for Netscape's substantial exclusion from the OEM and ISP/OLS channels
		d.	Microsoft's other exclusionary and predatory conduct reinforced the impact of excluding Netscape from the most important distribution channels
	3	share	result of Microsoft's predatory and anticompetitive conduct, Microsoft's e of browsers has risen dramatically at rivals' (principally Netscape's) ense
	4.	and a	rosoft's garnering of a substantial position in browsers through its predatory anticompetitive conduct has succeeded in blunting the browser threat and nataining its operating system monopoly
	5.	cond	a Schmalensee's conclusion that Microsoft's predatory and anticompetitive luct neither materially hindered browser rivals nor harmed competition is ged and unreliable

a.		Dean Schmalensee improperly analyzes the impact of Microsoft's predatory practices		
b.	Dean Schmalensee's conclusion that Microsoft's practices did not have a material impact on Netscape or other browser rivals is unreliable because it rests on flawed methodology and unreliable MDC survey data			
	(1)	The MDC data measure only the number of users of a primary browser		
	(2)	Survey data in general suffer from intrinsic difficulties, including biased questioning and methodology, that Dean Schmalensee did not take care to avoid		
	(3)	The MDC data in particular cannot be relied upon for the purposes for which Dean Schmalensee uses them 763		
	(4)	Dean Schmalensee presented the MDC data in a misleading way		
	(5)	Dean Schmalensee compounded the flaws in the MDC survey data by improperly combining them with other data		
	(6)	Microsoft's proposed findings mistakenly rely on MDC data in other ways as well		
	(7)	Microsoft's defense of Dean Schmalensee's reliance on the MDC data is misplaced		
c.	did n	Dean Schmalensee's conclusion that Microsoft's conduct did not materially raise rivals' costs or predatorily hinder rivals is flawed		
	(1)	Dean Schmalensee's contention that rivals' costs have not been raised is contrary to the evidence		
	(2)	Dean Schmalensee's conclusion that quality increases explain Internet Explorer's rise and Netscape's decline is inaccurate and ignores the impact of Microsoft's predatory campaig&01		

		(3) Dean Schmalensee's criticisms of the Adknowledge data, a of the inferences plaintiffs' economists drew from that data misplaced	a, are
	6.	Microsoft's formalistic response is unsound	15
В.		osoft's anticompetitive conduct created a dangerous probability that soft would monopolize the market for Internet browsers 81	17
	1.	Internet browsers comprise a relevant antitrust market	17
	2.	Microsoft specifically intended to monopolize the browser market 81	19
	3.	Microsoft's predatory and exclusionary conduct was reasonably likely to result in Microsoft's obtaining monopoly power over Internet browsers	20
		a. Microsoft anticipated that its conduct would result in its obtaining dominant position in Internet browsers 82	
		b. Because browsers exhibit network effects, it was likely that Micros initial gains in browser market share would lead to further increase	
		c. Microsoft already has more than half the browser market, and its s is increasing	
		d. Substantial barriers to entry would ensure that Microsoft could exemonopoly power in browsers	
		e. Microsoft was reasonably likely to acquire monopoly power in Intobrowsers	
	4.	Microsoft's monopolization of the browser market would increase the har competition already caused by Microsoft's effort to blunt the browser the	
C.		s acquisition of Netscape will not undo the harm to competition caused soft's predatory and anticompetitive conduct	•
	1	AOI acquired Netscape for reasons other than its browser	20

	2.	AOL will not, in the wake of Microsoft's predatory campaign, seek to resuscitate the browser threat; indeed, Microsoft remains likely to achieve dominance in browsers
	3.	AOL is unlikely to challenge Microsoft's monopoly in other ways, and the other devices it may develop would not affect Microsoft's operating system monopoly
D.		osoft's entire course of conduct has caused, and will continue to cause, tantial and far-reaching harm to competition
	1.	Microsoft's anticompetitive conduct aimed at blunting middleware threats reinforced the applications barrier to entry by extending Microsoft's ability to influence or control standards
	2.	Microsoft has achieved its objective of retaining significant influence over network-based standards and application development
	3.	Microsoft's effort to blunt threats to its control over standards, and to extend that control, will inhibit the emergence of other possible paradigm shifts
Е.		osoft's conduct has caused, and will continue to cause, substantial and far- ning consumer harm856
	1.	Microsoft's maintenance of its operating system monopoly has deprived, and will continue to deprive, consumers of the benefits of greater competition in operating systems
		a. Microsoft has deprived consumers of the possible development of greater choice in operating systems
		b. Microsoft has deprived consumers of lower prices that might have resulted from greater choice in operating systems
		c. Microsoft has deprived consumers of benefits from innovation in markets related to operating systems
		d. Microsoft has deprived consumers of benefits from other potential paradigm shifts that Microsoft's conduct deters 859

	e.	Microsoft's obtaining of a monopoly over browsers would result in further harm to consumers
	f.	Microsoft's claimed consumer benefits could have been achieved, and would have been even greater, absent Microsoft's anticompetitive and predatory campaign to maintain its operating system monopoly 860
2.	The tactics Microsoft has employed in its anticompetitive and predatory course of conduct harmed consumers	
1		soft's incentive to distort innovation to protect its operating system poly will continue to harm consumers
	a.	Microsoft's maintenance of its operating system monopoly preserves its control over innovation, to the detriment of consumers 867
	b.	Microsoft distorted innovation in order to protect its operating system monopoly, thereby harming consumers 869
	c.	Microsoft's continued incentive to protect its operating system monopoly can be expected to result in further strategic innovation that does not serve the interests of consumers 872